THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 6426 OF 1995

07.03.2006

Between:

Konda Veera Swamy and 19 others.

… Petitioners.

And

1. The Andhra Pradesh State Electricity Board rep,by its Member-Secretary, Vidyutsaudha, Somajiguda, Hyderabad and two others.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 6426 OF 1995

ORDER:

Petitioners, 20 in number, question the proceedings of the 1st respondent, in memo dated 11.03.1994, and the proceedings of the 2nd respondent dated 23.09.1994 as contrary to B.P.M.Ps.No. 54 dated 20.01.1989, arbitrary, unreasonable and illegal.

2. Brief facts, to the extent necessary, are that the petitioners herein were

working as Foreman Grade IV at the Kothagudem Thermal Power Station. The 2nd respondent, by proceedings dated 18.09.1993, communicated the seniority list of Foreman Grade IV wherein the petitioners were shown as seniors to the 3rd respondent. The 3rd respondent had unauthorisedly absented himself from duty for a period of six years and ten months prior to 1987 and as such he was removed from service. The 1st respondent, vide proceedings dated 24.06.1987, reinstated the 3rd respondent into service subject to the condition that his salary shall be fixed at the minimum of the time scale of the cadre i.e., Foreman Grade IV and the period of absence from duty shall be treated as leave on loss of pay. Subsequently, by memo dated 28.07.1988, the 1st respondent clarified that the seniority of the 3rd respondent should be fixed as the junior most in the cadre of Foreman Grade IV as on the date of reinstatement i.e., 13.07.1987 and that he shall not be considered for promotion since the reinstatement was purely on grounds of mercy. As a result the 3rd respondent was placed at the bottom of the seniority list of Foreman Grade IV and in fact in the seniority list dated 17.05.1994 the 3rd respondent was shown as junior to all the petitioners herein.

3. The 1st respondent issued proceedings dated 11.03.1994 stating that the board had reviewed the case of the 3rd respondent and consequently the 3rd respondent's seniority was required to be fixed above all Foreman Grade IV as on the date of the proceedings duly calling for objections from the affected Foremen, that the 3rd respondent was not entitled for promotion till the date of that proceedings, that the punishment of reduction of pay to the minimum of the time scale as on the date of reinduction would stand unaltered and that the 3rd respondent would not be entitled to any protection of pay based on the seniority now revised nor on the basis of comparison of pay with his juniors and that there would not be any financial commitment whatsoever to these revised orders. It is these proceedings dated 11.03.1994 which is questioned by the petitioners in this writ petition as arbitrary and illegal.

4. Sri M. Rajamalla Reddy, learned Counsel for the petitioners would contend that on his being placed in the minimum of the scale of pay of Foreman Grade IV, the 3rd respondent was automatically drawing lesser salary than the

petitioners herein and placing him as seniors to the petitioners would result in an anomalous situation whereby person's drawing higher pay scales would be junior to a person in lower pay sales. Learned Counsel would place reliance on **Anil Srivastava Vs. Union of India** in this regard.

5. On the other hand Sri Chandraiah Sunkara, learned Counsel for the 3rd respondent, would refer to the A.P. State Electricity Employees Discipline and Appeal Regulations wherein regulation 5 specifies the penalties which can be imposed for good and sufficient reasons for any misconduct specified in regulation 6. Regulation-5 (iv) enables the Board to impose the punishment of reduction to a lower rank in the seniority list or to a lower post or time scale not being lower than that to which he was directly recruited whether in the same class of service, or in another class of service, or to a lower stage in a time scale. Learned Counsel would submit that the punishments prescribed in clause (iv) of Regulation 5 are in the alternative and that the respondents had the power to impose any one of the penalties specified therein and inasmuch as the respondents had chosen to impose the punishment of reduction to a lower stage in the time scale and did not specifically impose the punishment of reduction to a lower rank in the seniority list, such a punishment cannot be said to have been imposed by implication and as a result the 3rd respondent was entitled to continue to remain in the same position in the seniority list as he was prior to the memo dated 12.08.1988 wherein he was placed in the last rank in the seniority list of Foreman Grade IV. Learned Counsel would submit that where a specific penalty is prescribed in this regard and in the absence of specified order imposing such a punishment, the 3rd respondent cannot be said to have been imposed such a punishment by implication.

6. In **Anil Srivastava**[1], the Supreme Court held that when employees in different lower grades are sought to be promoted to a higher grade, the question of continuous length of service cannot be the criteria for determination of *inter se* seniority and while the *interse* order of merit could be the criteria, in the absence thereof, a person who was drawing higher salary in the lower grade would, on promotion, be entitled to be placed above those were drawing a lesser scale of pay prior to their promotion.

7. The contention of Sri M. Rajamalla Reddy, learned Counsel for the

petitioners, that placing a person who draws a lesser scale of pay higher in the seniority list would be in congruous, inasmuch as a person draws a higher scale of pay only on the basis of his seniority, and that the consequence of the petitioner being placed in the minimum scale of pay of Foreman Grade IV is that he would automatically be placed at the bottom of the seniority list of Foreman Grade IV, cannot be said to be without merit. The discipline and appeal regulations however specifically provide for "reduction to a lower rank in the seniority list" as a measure of punishment, as distinct from "reduction to a lower stage in the time scale" and since the 3rd respondent was imposed the later punishment and not the former, it cannot be said that he was imposed the punishment of reduction to a lower rank in the seniority list by implication. It is well settled that an order of punishment would come into force only on such an order being passed and on the said order being communicated to the employee concerned. A punishment cannot be said to have been imposed by necessary implication. While the consequence, urged by Sri M. Rajamalla Reddy, learned Counsel for the petitioner, would undoubtedly have required acceptance by this Court, if the rules were silent, since there is a specific provision in regulations relating to imposition of penalty of "reduction to a lower rank in the seniority list" and since this specific order of punishment has not been imposed on the 3rd respondent, the contention urged on behalf of the petitioner in this regard has necessarily to be rejected.

8. The impugned order restoring the seniority of the petitioner back to his original seniority is in accordance with the 3rd respondent and appeal regulations of the respondent board and as such cannot be faulted.

9. The writ petition fails and is accordingly dismissed. However in the circumstances without costs.

Date: 07.02.2006 RAMESH RANGANATHAN, J

MRKR